

APPEAL NO. 040731
FILED MAY 13, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 5, 2004. The hearing officer resolved the disputed issue by deciding that the Independent Review Organization's (IRO) decision denying surgery is not supported by a preponderance of the evidence in this case, and the proposed spinal surgery is medically necessary treatment for the respondent's (claimant) compensable spinal injury of _____. The appellant (carrier) appealed, arguing that the hearing officer's finding that spinal surgery is medically necessary treatment for the claimant's spinal injury of _____, is supported by insufficient evidence, or, alternatively, contrary to the great weight and preponderance of the evidence. The carrier additionally argues that the determination that the IRO's decision is not supported by a preponderance of legal evidence is legal error and should be reversed. The claimant responded, urging affirmance of the hearing officer's decision.

DECISION

Affirmed.

This case involves a dispute over the medical necessity of proposed spinal surgery. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.308 (Rule 133.308) pertains to medical dispute resolution by IROs. See Texas Workers' Compensation Commission Appeal No. 021958-s, decided September 16, 2002, regarding application of a preponderance of the evidence standard.

The hearing officer did not err in concluding that the IRO's decision and order is not supported by a preponderance of the evidence. The claimant sustained a compensable spinal injury on _____. On more than one occasion a request was made by the claimant's doctor to perform spinal surgery. The carrier disputed the recommendation for spinal surgery. The Texas Workers' Compensation Commission assigned this case to an IRO. The IRO agreed with the adverse determination of the carrier that the claimant did not need the requested lumbar surgery at this time. The IRO report contained the following "Rationale" for its decision that the requested surgery was not medically necessary to treat the claimant's condition at this time: "the documentation provided did not demonstrate that the [claimant] has tried and failed nonoperative treatment modalities." The claimant's doctor testified at the CCH that the claimant failed to improve with nonsurgical treatment, including physical therapy, the passage of time, and medication. Further, in evidence was a report dated October 20, 2003, from a referral doctor who opined that there is a risk that prolonged delay of surgery may cause permanent neural injury.

There is conflicting medical evidence on the disputed issue. In the instant case, the hearing officer determined that the IRO's decision is not supported by a

preponderance of the evidence. The issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Nothing in our review of the record reveals that the challenged determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS, SUITE 1050
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Veronica L. Ruberto
Appeals Judge